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Capital Punishment

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DEBATE

RESOLVED: That Capital Punishment is a wise public policy.

Seward

CLARENCE DARROW
Negative

Judge ALFRED J. TALLEY
Affirmative

Introduction by

LOUIS MARSHALL

Foreword by

WARDEN LEWIS E. LAWES

THE LEAGUE FOR PUBLIC DISCUSSION
NEW YORK 1924

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Foreword

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FOREWORD

MR. JAVITS: Mr. Darrow, Mr. Lawes, Mr. Marshall, Judge Talley, on behalf of the League for Public Discussion and (I am sure I also voice the sentiment of this community) on behalf of the community of this great city, we welcome the opportunity and the privilege of having both you, Mr. Darrow, and you, Judge, address us on a subject or discuss an issue which provokes the minds of a great many people.

Warden Lawes, as you all know, is the head of the institution of Sing-Sing, where the executions take place in the State of New York. Warden Lawes, as the Temporary Chairman, will now address you. (Applause)

HON. LEWIS E. LAWES: Ladies and Gentlemen: The Temporary Chairmanship in a debate that includes these gentlemen, it seems to me, is like the relation of a physician or surgeon to an appendix, or some people toward a prohibition enforcement agent.

I feel this subject very keenly and, as Chairman, should be impartial. That will be very difficult for me. We have had murderers since time began, and the problems of dealing with them. Yet if this highly complex subject was spoken about to the man in the street, he would undoubtedly say the solution was to hang or execute all the murderers, imprison all the criminals and spank the juvenile delinquents and send them to bed.

It reminds me of an incident that occurred while I was Superintendent of the New York City Reformatory. Down at the Municipal Building in this city there was an examination being held in the civil service rooms by the Health Department of the City of New York for the position of Inspector in the Health Department. And one of the questions asked was, "What are rabies, and what can you do for them?" The Irishman, never at a loss for a reply, answered, "Rabies are Jewish priests, and you can't do a damned thing with them." (Laughter)

That is the attitude, ladies and gentlemen, of the public at large toward the criminal, and, particularly, the murderer. Someone asked me, "Why are you so interested in murderers?" Why shouldn't I be? Yesterday morning I received three orders from the highest court in this State that I shall sometime during the week kill three different men. I alone determine what hour and what minute they shall die.

It is quite necessary, under those conditions, at least, that you know something. Each and every one of you would have made a study of this subject under the same conditions. I decided—and all good citizens should—"Is it necessary, as a deterrent to prevent additional murderers, to kill?"

What kind of men go to the chair? Is it true that three out of four are there for their first offense? Is it true that they are one-crime men; or, are they killers who should be put away by the State for the protection of the community? That can be easily determined.

Why—and this is agreed upon by everyone, no matter what their views may be—why have we the highest homicide rate of any civilized nation in the world? Why? We find that out of eighty-five homicides we send one man to the chair. If we did that here in New York City, taking the percentage of the country as a whole, there would be one man going to the chair out of every five hundred. Now if we take Italy (and Italy furnishes over thirty per cent of the men who are killed in the electric chair), Italy would have two hundred; Sweden, seventy-five; Great Britain, fifty; Holland, twenty-five; and Switzerland, which is divided in capital punishment (some communities have it, and others have not), would have it so seldom as to be a seven-day wonder.

Now, this subject is something worthy of all men and women thinking about. We find in Rhode Island (a small State, but with no capital punishment) a high percentage of foreigners and yet a low percentage of murders. We find that throughout Europe it is much lower than we find it here.

Is it true that a poor man always goes? Is it true that a rich man never goes? I don't mean to imply by that that the Judge or that the Jury is anything but fair. But one who has money is able to hire counsel and enabled to present their case so much better. In any event, try and find someone who had money who has gone.

I am not supposed to talk. I am just presumed to introduce someone, and that I must do. When I get on the subject it is very hard for me to get

away. I have seen so much of the punishment and, perhaps, am biased in that way. Therefore, I have the pleasure of introducing one for whom an introduction is not necessary. He is known locally, nationally and internationally—the Chairman of this debate—the Hon. Louis Marshall. (Applause)

Introduction

INTRODUCTION

THE CHAIRMAN (Mr. Marshall): Ladies and Gentlemen: I shall not attempt to deliver any address, because you are here for the purpose of listening to the debaters of the afternoon. The subject which is to be discussed is one which has occupied the thought of the world for thirty centuries. There has been a great change of ideas, but capital punishment has not yet been abolished, although it has been very much limited in its administration.

In the ancient days all penology was based upon the idea of retaliation, vengeance—as it was known in the Roman laws, the lex talionis. And the laws of Greece and of Rome were bloody laws. We all know of the Draconian laws of Greece. We all know how men like Socrates were executed merely for expressing opinions which were distasteful to those in authority. We know the laws of the twelve tables in ancient Rome. And those who are familiar with literature can tell at once from their experience in the literature of ancient days what horrible examples of brutality and cruelty were manifested there constantly.

In the Middle Ages the order of the day was the infliction of death. Even in England, which is considered to be the cradle of liberty, at the time of Blackstone, a hundred and sixty years ago, there were just one hundred and sixty offenses which were called felonies without the benefit of clergy, which meant the infliction of death for the commission of those crimes.

Until the early part of the nineteenth century it was a capital offense in England to steal property worth more than one shilling. There were changes, however, in public sentiment regarding the principles on which punishment was to be inflicted. And in the middle of the eighteenth century there arose such men as Precarrio in Italy, Montesque in France and a little later Jeremy Benton in England, who were the advance guard of a reasonable law in respect to punishment for crime.

And now, since that day, the death penalty is inflicted practically in only two cases—those of murder and of treason. And the question now to be considered is whether or not we should change our policy further and decide that there shall be or shall not be capital punishment.

The subject is not an easy one. If we follow our sympathetic hearts, if we really act according to the natural impulse of a human being, we would be all apt to say that capital punishment should be abolished. There are, however, serious problems of a practical nature which must be pondered and which must be determined. And it is only as a result of careful study, of careful working out of the problem in the laboratory of the statistician and the scientific penologist that we will ever arrive at a sound and satisfactory determination.

There are those who still believe that the law should be retaliatory, vindictive in its operation. There are, however, others who believe that the law and the statutes regarding punishment for crime shall be of a deterrent nature, of an educative character. And between these various schools of thought, we ordinary men are sometimes greatly puzzled.

I am not here for the purpose of presenting for your consideration this afternoon a solution of the question. But in 1915 the Constitutional Convention of New York seriously considered the question as to what should be done with this subject of capital punishment. I had the honor of being the Chairman of the Committee on Bill of Rights on that occasion. And we had a very industrious Committee. We studied the subject from all of its angles for five months. And, finally, we reported by a vote of six to five a project which was put on the table by the Convention itself, because the Convention was not able to decide the proposition.

But merely for the purpose of indicating another school of thought or another way of arriving at the solution—not that I desire to forestall anything that may be said in the course of this debate—I will just read to you what the conclusion was of that Committee which dealt with the subject of capital punishment. And it was this:

"On a conviction for a crime now punishable by death, the Jury may by its verdict impose either the death penalty or life imprisonment. And, in the latter event, no pardon or commutation shall be granted, unless the innocence of the person convicted is established."

That might, perhaps, present a middle way. But you are not legislating, and I am not discussing this question before a legislative body. I am merely throwing out this thought as a possible method of solving, probably not forever but for some years to come, what is now becoming every day a more important subject to be dealt with courageously and with full understanding of all the facts.

I have talked longer than I intended to. You have come here to listen to the debaters. I shall now announce the program, which has now been modified to some extent by agreement between the two gladiators. (Laughter)

The argument will be opened by Judge Talley in an address which will last for thirty-five minutes. Mr. Darrow will follow and will have forty minutes for his opening remarks. Judge Talley will then make his refutation speech, which will occupy twenty minutes; and Mr. Darrow will close with a speech of fifteen minutes. Each therefore having fifty-five minutes allotted to him. There will be no intermission because of the fact that we began somewhat later than we expected.

I now have the great honor of presenting to you Judge Talley, who is one of our respected citizens, a Judge of great ability, member of the Court of General Sessions of this city, who for years was connected with the office of the District Attorney of the City of New York, who has given careful study to those questions of criminal law which he is administering so ably, and who, particularly, has given more than ordinary thought to the subject which he is now to discuss. (Applause)

Affirmative
Presentation Address

JUDGE ALFRED J. TALLEY

CLARENCE DARROW

JUDGE ALFRED J. TALLEY

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AFFIRMATIVE PRESENTATION ADDRESS

JUDGE ALFRED J. TALLEY: Mr. Chairman, Mr. Lawes, Ladies and Gentlemen: More brilliant nonsense has been written about crime and criminals than upon any other subject under the sun. And if this afternoon furnishes an occasion when the people of this city, represented by so large and distinguished an audience, will begin to think, and then think right, upon the subject that is of such pressing importance, we will indeed be indebted to my friend, Mr. Darrow, for coming out from the West to New York and attracting an audience of this size. (Laughter and applause)

Now, there isn't much difficulty in defining the terms of this debate. "Is Capital Punishment a Wise Public Policy?" There can't be any misunderstanding as to precisely the purport of this discussion.

A wise policy is that which is reasonably calculated to accomplish the end which is sought. And in a country, such as ours, that policy should have the approval of the majority of the people of a Republic. And capital punishment is the right exercised by the State to put to death one who has violated that law of the State which says, "Thou shalt not kill," and for a murder deliberated and premeditated upon, that penalty shall be imposed.

We need not consider the right of the nation to put to death one guilty of treason. Happily, since the days of Benedict Arnold, that crime, thank Heaven, has been of rare occurrence in this country of ours. And so all we need to concern ourselves with this after-

noon is the question of the wisdom and the expediency and the utility of the State exercising the right to put to death one guilty of the crime of murder.

Now, homicide is the killing of a human being by the act or procurement or commission of the one who accomplishes the slaying. But not every homicide is murder. Bear in mind that in this State and in practically all of the States that adopt capital punishment—either without qualification, as in this State of ours, or, as was suggested by Mr. Marshall, where the question of the penalty is left sometimes to the Jury—the only kind of homicide that is punishable by death is what we designate as murder in the first degree. And that is the killing of a human being—which is neither excusable nor justifiable, and which follows deliberation and premeditation upon the part of the killer.

So that for no act done in the heat of passion, no act under provocation or occasion that might make it excusable or justifiable is punished in any of our States by the extreme penalty. But only that kind of killing which follows the mental operation requiring some appreciable length of time, which results in the death of a human being—that kind of slaying alone is punishable by death in any of our States.

Now, the sanest division of my side of this question today would seem to be to discuss, first, the right of the State to impose capital punishment and, then, the expediency and necessity of enforcing that kind of punishment.

In the heart of every man is written the law, "Thou shalt not kill." Upon the statute books of every civilized community is written the law, "Thou shalt not kill." And no one offends that precept through

ignorance. It is fundamental that every man knows it is wrong and illegal to take the life of another man.

And we say to the potential murderer in this country of ours, "If you have an intention to slay, your mental operation is that of a premeditated and deliberated effort to kill, if after that condition of mind is found to have been present in you, you take the life of another human being, then you shall be tried for that offense, and all the forms of law shall be observed. Twelve men, selected because of their lack of interest in the result, save such as they may have as citizens of the community, shall be drawn from the highways and byways to constitute a Jury. A Judge shall preside to see that all the rights given by law to such a defendant as you will be observed. And when—and not until that time—these fellow citizens of yours shall declare that you were the one who accomplished this slaying and that it was not accomplished without deliberation and premeditation upon your part and you had neither right nor justification nor excuse to kill, when your twelve fellow citizens have thus declared and characterized your act, the law says that is murder, and the law says for that murder you should forfeit your life, because you have taken it upon yourself to take the life of another."

Is there anything barbaric or unnatural about a sovereign State making that declaration to its citizens? We must have not merely a declaration of a law, but we must have a sanction to that law if any State can hope to endure. Not merely the writing of prohibitory acts upon the statute books of any State is enough, unless back of that statute there stands a penalty for the violation of that law. And, in the absence of such a penalty, the law is a senseless and meaningless thing.

Those who would abolish capital punishment would give this notice to the potential murderer: "You who have snatched away the life of one who had a right to live, you shall be tried by a Jury of your peers. The State will see to it that you are defended by able counsel if you are without means to employ one for yourself. And if it should happen that a Jury should determine that you are guilty of premeditative murder, you are then by reason of that verdict convicted of that crime. You shall not forfeit your life in return for the one which you destroyed, but you shall be incarcerated in a prison possibly—only possibly—for the remainder of your life. And when you are sent to that prison you shall be put into a cell, into which the sunlight of which you have deprived your victim must never come. You shall be given some light labor for a few hours a day—fewer than ever falls to the lot of the average man who must earn his bread by the sweat of his brow amongst law-abiding, non-killing people of the community. And you are given this labor not for what it might produce, but primarily that your time might be profitably to yourself employed. And you shall be given entertainment. If you happen to kill in the State of New York, you will be provided with a moving picture show every night of the week (laughter), and at various times during the season prominent Broadway stars will bring up their companies and their paraphernalia for your entertainment. Your less fortunate brother, who has respected the law, must pay for that entertainment in the theatres of Broadway. But you, a ward of the State, will be provided with these things without the necessity of paying for them at all. And you shall be given three meals a day—meals that will be supervised by

a dietician employed by the State. (Laughter.) And if you don't like those meals, if you don't like the prison fare, you may order that which you eat from a private cafeteria, such as we have under the splendid and able direction of a warden of a prison, as our friend, Warden Lawes, who graces this occasion this afternoon (laughter and applause), whose last report shows that more than one-half of the prisoners today confined in Sing-Sing prison eat outside of the prison fare, and that for the first six months of 1928 expended over $50,000 for that kind of food."

That is the notice that is given to the potential murderer in the State of New York. Has the State the right to impose capital punishment for first degree murder? Why, if Mr. Darrow, not content with annihilating me today with the force of his eloquence and logic, would at the conclusion of this debate—or, possibly, before it (he is moving closer to me) (laughter) —attempt to take my life, I would resist that effort. And if it appeared to me, wisely or unwisely, that I was in imminent danger, I would slay him upon this platform. And neither God nor man would question my right to defend my life. Now if I, as an individual, have that right to kill in self-defense, why has not the State, which is nothing more than an aggregation of individuals, the same right to defend itself against unjust aggression and unjust attack? (Applause.)

Does anyone dispute the right of a nation to kill in the protection of its citizens? Why should the right of any State be questioned when it seeks to protect its citizens and their lives and property against unjust aggression?

Because, in the progress of civilization, the individual has delegated many of his privileges and powers

to that which we call the State, we do not in these days leave private vengeance to the individual. We say we are citizens of no mean State or of a great Republic, and that State or that Republic will protect our rights. We leave the sanction of the violated law to the State, rather than take vengeance in our own hands as individuals.

Those who would seek to take away from the State the power to impose capital punishment seek to despoil the symbol of justice. They would leave in her hands the scales that typify that in this country at least all are equal before the law and that these scales must never tip from one side to the other, loaded on either side with power or influence of the litigant that comes to the temple of justice. They would leave over her eyes the bandage that typifies that she must be no respecter of persons, but they would take from her hand the sword, without which the other symbols would be meaningless things. For if justice has not the right to enforce her edicts and her mandates, then her laws may be lost upon a senseless people. (Applause.)

The object of punishment of crime must be deterrent, and it must be vindictive—not vindictive in the sense of revengeful, but it must be imposed so that the law and its majesty and sanctity may be vindicated.

It will be argued, I am sure, as it has been argued countless times by those in favor of abolishing capital punishment, that it is not a deterrent to those who would commit crime; that it deters no one with murder in his hear from committing murder. I can read books without number in favor of that argument. I can delve into the works of Bocalley and Lombroso and Lawes and other men who have made intensive

study of this question. But, ladies and gentlemen, please do not misunderstand me when I say that out of my own experience, as lawyer for defendant, as prosecutor for the State and as Judge of the greatest criminal court in all the world, I say that the only thing the criminal fears is the penalty of death that will follow his crime. And I need not read that in any book or any essay or any treatise. That is my experience of more than twenty-five years.

Who can say, and substantiate his assertion, that in this country of ours, shamed with ten thousand murders in every twelve months—who can say, with that criminal tendency upon the part of the American people, that stigmatizes us as to the most lawless nation on the face of the earth—who can say that, with murder in the heart of so many of our people, the number would not be twice as great or three times as great if death, which is still the king of terrors (more to the criminal than to the righteous man), were not maintained as the penalty for an unlawful killing? (Applause.)

Do you ladies and gentlemen have any appreciation of the homicide or the murder figures of this country of ours, of the amazing increase beyond all calculation that is shown year after year? Do you realize that in New York, our great Empire City, there is practically a murder every day? And we are a population of some six millions here. And in Mr. Darrow's splendid city of Chicago, with a population of about three million, there are more murders committed annually than there are in New York. And not only are these numbers appalling, but the increase in the annual rate is the thing that should make us pause.

In twenty-eight cities from which statistics were available, in 1900 there were 609 homicides. That leaped in 1910 in these same twenty-eight of the principal cities of our country to 1,365. And for the period running from 1917 to 1921 those figures of twenty years ago—then 609 homicides a year—reached the appalling figure of 8,946.

MR. DARROW (Interposing): Beg pardon. What is that last figure?

JUDGE TALLEY (Continuing): Eight thousand, nine hundred and forty-six. And I am reading from the statistics of Frederick M. Hoffman, Consulting Statistician of the Prudential Insurance Company of America, a statistician who is cited with approval by Warden Lawes—

WARDEN LAWES (Interposing): Who also does not believe in capital punishment.

JUDGE TALLEY: Who also does not believe in capital punishment. (Applause.) He is with Mr. Lawes and with Mr. Darrow on that subject. And while his statistics are right, his conclusions are all wrong. (Laughter and applause.)

Now, just let me give you an illustration of the homicides in our principal American cities. These figures are based upon 100,000 of the population—that is, so many murders for each 100,000 of the population. Out of courtesy to our visitor, I will refer to his city first. (Laughter.)

In the period from 1912 to 1916 the figures in Chicago for 100,000 population were represented by nine and five-tenths per cent. They leaped in 1922-23 to twelve and seven-tenths per cent plus. In New York —wicked New York—the figures in 1912 to 1916 are represented by five and six-tenths per cent: less in

the period of 1917 to 1921—five and three-tenths per cent; and in 1922-23 they were five and five-tenths per cent plus. In Memphis, Tennessee—(now bear in mind the figures, twelve per cent for Chicago and five per cent in New York)—the figures reached sixty-six and two-tenths per cent. And in Nashville, Tennessee, in the last year they reached thirty-four and seven-tenths per cent. And in the city of Washington, the Capitol of our great Republic—with twelve per cent in Chicago, five per cent in New York, the percentage in Washington reached thirteen and three-tenths per cent.

Now I cannot take the time to go over in details these figures. I simply submit them to you as sketchily as time permits, with this suggestion to follow them: Is this the time to consider abolishing capital punishment when our country is disgraced by the number of murders that are committed upon our shores?

I say it is the time for sensible men and women to come to a realization that there is one way to deal with the criminal and the malefactor, and that is with certainty and severity. There is no other way in which the integrity of the people of this country or the sanctity of the law may be observed. I am in favor of abolishing capital punishment when the murderers of the country abolish its necessity. (Applause.)

Negative
Presentation Address

CLARENCE DARROW

THE CHAIRMAN: It is only because the next speaker happens for some unknown reason not to live in the City of New York that this Lochinvar has been obliged to come out of the West for the purpose of trying to prove to you that the steed that he rides today is the best. Mr. Darrow has a national reputation. He is known from the Atlantic to the Pacific as a lawyer, as a defender of unpopular causes (laughter), as an essayist and as a great orator. I need not say more. He will prove to you that what I have said so far is pretty nearly correct. (Applause.)

MR. DARROW: I had this stand moved up so I could get next to the audience. (Laughter)

I hope I will not be obliged to spend too much time on my friend's address. I don't think I shall need to.

First, I deny his statement that every man's heart tells him it is wrong to kill. I think every man's heart desires killing. Personally, I never killed anybody that I know of. But I have had a great deal of satisfaction now and then reading obituary notices (laughter), and I used to delight, with the rest of my hundred per cent patriotic friends, when I saw ten or fifteen thousand Germans being killed in a day.

Everybody loves killing. Some of them think it is too mussy for them. Every human being that believes in capital punishment loves killing, and the only reason they believe in capital punishment is because they get a kick out of it. (Laughter and applause) Nobody kills anyone for love, unless they get over it

temporarily or otherwise. But they kill the one they hate. And before you can get a trial to hang somebody or electrocute him, you must first hate him and then get a satisfaction over his death.

There is no emotion in any human being that is not in every single human being. The degree is different, that is all. And the degree is not always different in different people. It depends likewise on circumstances, on time and on place.

I shall not follow my friend into the labyrinth of statistics. Statistics are a pleasant indoor sport—not so good as cross-word puzzles (laughter)—and they prove nothing to any sensible person who is familiar with statistics. (Applause)

I might just observe, in passing, that in all of these states where the mortality by homicide is great, they have capital punishment and always have had it. (Applause) A logical man, when he found out that the death rate increased under capital punishment, would suggest some other way of dealing with it. (Applause)

I undertake to say—and you can look them up yourselves, for I haven't time to bother with it (and there is nothing that lies like statistics)—I will guarantee to take any set of statistics and take a little time to it and prove they mean directly the opposite for what is claimed. But I will undertake to say that you can show by statistics that the States in which there was no capital punishment have a very much smaller percentage of homicides. (Applause)

I know it is true. That doesn't prove anything, because, as a rule, they are States with a less divers population, without as many large cities, without as much mixtures of all sorts of elements which go to add to the general gayety—and homicide is a product of

that. There is no sort of question but what those States in the United States where there is no capital punishment have a lower percentage than the others. But that doesn't prove the question. It is a question that cannot be proven one way or the other by statistics. It rests upon things, upon feelings and emotions and arguments much deeper than statistics.

The death rate in Memphis and in some other Southern cities is high from homicide. Why? Well, it is an afternoon's pleasure to kill a negro—that is about all. (Applause) Everybody knows it.

The death rate recently in the United States and all over the world has increased. Why? The same thing has happened that has happened in every country in the world since time began. A great war always increases death rates.

We teach people to kill, and the State is the one that teaches them. (Applause) If a State wishes that its citizens respect human life, then the State should stop killing. It can be done in no other way, and it will perhaps not be fully done that way. There are infinite reasons for killing. There are infinite circumstances under which there are more or less deaths. It never did depend and never can depend upon the severity of the punishment.

He talks about the United States being a lawless country. Well, the people somehow prefer it. (Laughter) There is such a thing as a people being too servile to law. You may take China with her caste system and much of Europe, which has much more caste than we. It may be full of homicides, but there is less bread and there is less fun; there is less opportunity for the poor. In any new country, homicide is more frequent than in an old country, because there

is a higher degree of equality. It is always true wherever you go. And in the older countries, as a general rule, there are fewer homicides because nobody ever thinks of getting out of his class; nobody ever dreams of such a thing.

But let's see what there is in this argument. He says, "Everybody who kills, dreads hanging." Well, he has had experience as a lawyer on both sides. I have had experience on one side. I know that everybody who is taken into court on a murder charge desires to live, and they do not want to be hanged or electrocuted. Even a thing as alluring as being cooked with electricity doesn't appeal to them.

But that hasn't anything to do with it. What was the state of mind when the homicide was committed? The state of mind is one thing when a homicide is committed and another thing weeks or months afterward, when every reason for committing it is gone. There is no comparison between it. There never can be any comparison between it.

We might ask why people kill. I don't want to dispute with him about the right of the State to kill people. Of course, they have got a right to kill them. That is about all we do. The great industry of the world for four long years was killing. They have got a right to kill, of course. That is, they have got the power. And you have got a right to do what you get away with. (Applause) The words power and right, so far as this is concerned, mean exactly the same thing. So nobody who has any knowledge of philosophy would pretend to say that the State had not the right to kill.

But why not do a good job of it? (Laughter) If you want to get rid of killings by hanging people or electrocuting them because these are so terrible, why

not make a punishment that is terrible? This isn't so much. It lasts but a short time. There is no physical torture in it. Why not boil them in oil, as they used to do? Why not burn them at the stake? Why not sew them into a bag with serpents and throw them out to sea? Why not take them out on the sand and let them be eaten by ants? Why not break every bone in their body on the wrack, as has been done for such serious offenses as heresy and witchcraft?

Those were the good old days in which the Judge should have held court. (Laughter and applause) Glorious days, when you could kill them by the million because they worshipped God in a different way from that which the State provided, or when you could kill old women for witchcraft! There might be some sense in it if you could kill young ones, but not old ones. (Laughter) Those were the glorious days to talk of capital punishment. And there wasn't a Judge or a preacher who didn't think that the life of the State depended upon their right to hang old women for witchcraft and to persecute others for worshipping God in the wrong way.

Why, our capital punishment isn't worth talking about, so far as it is being a preventive is concerned. (Applause) It isn't worth discussing. Why not call back from the dead and barbarous past the hundred and sixty or seventy odd crimes that were punishable by death in England? Why not once more reenact the Blue Laws of our own country and kill people right? Why not resort to all the tortures that the world has always resorted to to keep men in the straight and narrow path? Why reduce it to a paltry question of murder?

Everybody in this world has some pet aversion to something, and on account of that pet aversion they would like to hang somebody. If the prohibitionists made the law, they would be in favor of hanging you for taking a drink, or certainly for bootlegging, because to them that is the most heinous crime there is.

Some men slay for murder. Why? As a matter of fact, murder as murder is very rare; and the people who commit it, as a rule, are of a much higher type than others. You may go to any penitentiary and, as a rule, those who have been convicted of murder become the trustees; whereas, if you are punishing somebody as a sneak thief or a counterfeiter or a confidence man, they never get over it—never.

Now, I don't know how injustice is administered in New York. (Laughter) I just know about Chicago. But I am glad to learn from the gentleman that if a man is so poor in New York that he can't hire a lawyer, that he has a first-class lawyer appointed to defend him—a first-class lawyer appointed to defend him. (Laughter) Don't take a chance and go out and kill anybody on the statement made by my friend. (Laughter)

I suppose anybody can go out and kill somebody and ask to have my friend, Sam Untermyer, appointed. (Laughter) There never was such a thing. Here and there, a good lawyer may have defended people for nothing. But no court ever interferes with a good lawyer's business by calling him in and compelling him to give his time. They have been lawyers too recently themselves to ever work a trick like that on a lawyer. (Laughter) As a rule, it is the poor and the weak and the friendless who furnish the victims of the law. (Applause)

Let me take another statement of my friend. He said, "Oh, we don't hang anybody if they kill when they are angry; it is only when they act premeditatedly." Yes, I have been in courts and heard Judges instruct people on this premeditated act. It is only when they act under their judgment and with due consideration. He would also say that if a man is moved by anger, but if he doesn't strike the deadly blow until such time as reason and judgment has a chance to possess him, even if it is a second—how many times have I heard Judges say, "Even if it is a second?" What does any Judge know about premeditation? What does anybody know about it? How many people are there in this world that can premeditate on anything? I will strike out the "pre" and say how many people are there that can meditate? (Laughter)

How long does it take the angry man for his passions to cool when he is in the presence of the thing that angers him? There never was a premeditated murder in any sense of psychology or of science. There are planned murders—planned, yes—but back of every murder and back of every human act are sufficient causes that move the human machine beyond their control.

The other view is an outworn, outlawed, unscientific theory of the metaphysicians. Does anybody ever act in this world without a motive? Did they ever act without a sufficient motive? And who am I to say that John Smith premeditated? I might premeditate a good deal quicker than John Smith did. My judgment might have a chance to act quicker than John Smith's judgment had a chance to act.

We have heard talk of justice. Is there anybody who knows what justice is? No one on earth can

measure out justice. Can you look at any man and say what he deserves—whether he deserves hanging by the neck until dead or life in prison or thirty days in prison or a medal? The human mind is blind to all who seek to look in at it and to most of us that look out from it. Justice is something that man knows little about. He may know something about charity and understanding and mercy, and he should cling to these as far as he can. (Applause)

Now, let me see if I am right about my statement that no man believes in hanging, except for a kick or for revenge. How about my friend, Judge Talley, here. He criticises the State of New York because a prisoner may be shown moving pictures. What do you think about it—those of you who think? What do you feel about it—those of you who have passed the hyena age? I know what they think. What do you think about shutting up a man in a penitentiary for twenty years, in a cell four feet wide and seven feet long—twenty years, mind!—and complaining because he had a chance now and then to go out and see a moving picture—go out of his cell?

A body of people who feels that way could never get rid of capital punishment. If you really felt it, you would feel like the Indian who used the tomahawk on his enemy and who burned him and embalmed his face with the ashes.

But what is punishment about anyway? I put a man in prison for the purpose of getting rid of him and for such example as there might be. Is it up to you to torture him while he is there? Supposing you provided that every man who went to prison should be compelled to wear a nail half an inch long in his shoe. I suppose some of you would do it. I don't know

whether the Judge would or not, from what he said. (Laughter)

Is there any reason for torturing someone who happens to be in prison? Is there any reason why an actor or even an actress might not go there and sing? There is no objection to a preacher going there. Why not give him a little pleasure? (Laughter)

And they really get food there—what do you know about that? (Laughter) Now, when I heard him tell about what wonderful food they get—dietary food—did you ever know anybody that liked dietary food? (Laughter) I suppose the Constitution of the State of New York contains the ordinary provision against cruel and inhuman punishment, and yet you send them up there and feed them on dietary food. (Laughter)

And you can take your meals out! Now, some of you might not have noticed that I walked over and asked the Warden about it. The reason I did that is because I am stopping over here at the Belmont, and I didn't know but I'd rather go up and board with him. (Laughter)

Now, this is what I find out: that for those who have gained consideration by good conduct over a considerable period—how long, Mr. Lawes?

WARDEN LAWES: One year.

MR. DARROW: One year—they may spend three dollars a week for board. I pay more than that over here. (Laughter) They ought to pass some law in New York to prevent the inmates getting dyspepsia. And for those who attain the second class, they may spend a dollar and a half a week. And for those below the second class, nothing can come from outside —nothing. A pure matter of prison discipline!

Why, I wonder if the Judge ever took pains to go up there. I will tell you. I have had some experience with people that know them pretty well. I never saw a man who wanted to go to prison, even to see the movies. (Laughter) I never saw a man in my life who didn't want to get out.

I wonder what you would have. Of course, I live in Chicago, where people are fairly human—I don't know, maybe I don't understand the New York people. What would you have? Suppose you could tell yourselves how a person was to be treated while in prison—and it doesn't require a great amount of imagination. Most people can think of some relative or some friends who are there. If you can't, most of you can think of a good many that ought to be there. (Laughter) How would you have them treated—something worse than being shut up in a cell, four by seven, and given light work—like being a Judge or practicing law (laughter)—something worse than dietary food?

I will tell you. There is just one thing in all this question. It is a question of how you feel, that is all. It is all inside of you. If you love the thought of somebody being killed, why, you are for it. If you hate the thought of somebody being killed, you are against it. (Applause)

Let me just take a little brief review of what has happened in this world. They used to hang people on the cross-ways and on a high hill, so that everybody would be awed into goodness by the sight. They have tortured them in every way that the brain of man could conceive. They have provided every torture known or that could be imagined for one who believed differently from his fellow-man—and still the belief persisted. They have maimed and scarred and starved

and killed human beings since man began penning his fellow-man. Why? Because we hate him. And what has added to it is that they have done it under the false ideal of self-righteousness.

I have heard parents punish their children and tell their children it hurt the parent more than it did the child. I don't believe it. (Laughter) I have tried it both ways, and I don't believe it. (Laughter) I know better.

Gradually, the world has been lopping off these punishments. Why? Because we have grown a little more sensitive, a little more imaginative, a little kindlier, that is all.

Why not reenact the code of Blackstone's day? Why, the Judges were all for it—every one of them—and the only way we got rid of those laws was because Juries were too humane to obey the courts. (Applause)

That is the only way we got rid of punishing old women, of hanging old women in New England—because, in spite of all the courts, the Juries would no longer convict them for a crime that never existed. And in that way they have cut down the crimes in England for punishment by death from one hundred and seventy to two. What is going to happen if we get rid of them? Is the world coming to an end? The earth has been here ages and ages before man came. It will be here ages and ages after he disappears, and the amount of people you hang won't make the slightest difference with it.

Now, why am I opposed to capital punishment? It is too horrible a thing for a State to undertake. We are told by my friend, "Oh, the killer does it; why shouldn't the State?" I would hate to live in a State that I didn't think was better than a murderer. (Applause)

But I told you the real reason. The people of the State kill a man because he killed someone else—that is all—without the slightest logic, without the slightest application to life, simply from anger, nothing else!

I am against it because I believe it is inhuman, because I believe that as the hearts of men have softened they have gradually gotten rid of brutal punishment, because I believe that it will only be a few years until it will be banished forever from every civilized country—even New York—because I believe that it has no effect whatever to stop murder. (Applause)

Now let's make that simple and see. Where do the murders come from? I would say the second largest class of what we call murders grow out of domestic relations. They follow those deep and profound feelings that are at the basis of life—and the feelings which give the greatest joy are susceptible of the greatest pain when they go a-riot.

Can you imagine a woman following a man around with a pistol to kill him that would stop if you said, "Oh, you will be hanged!" Nothing doing—not if the world was coming to an end! Can you imagine a man doing it? Not at all. They think of it afterwards, but not before.

They come from acts like burglary and robbery. A man goes out to rob or to burglarize. Somebody catches him or stops him or recognizes him, and he kills to save himself. Do you suppose there was ever a burglar or robber since the world began who would not kill to save himself? Is there anybody who wouldn't? It doesn't make any difference who. Wouldn't he take a chance shooting? Anyone would do it. Why, my friend himself said he would kill in self-defense. That is what they do. If you are going to stop them,

you ought to hang them for robbery—which would be a good plan—and then, of course, if one started out to rob, he would kill the victim before he robbed him. (Laughter)

There isn't, I submit, a single admissible argument in favor of capital punishment. Nature loves life. We believe that life should be protected and preserved. The thing that keeps one from killing is the emotion they have against it; and the greater the sanctity that the State pays to life, the greater the feeling of sanctity the individual has for life. (Applause)

There is nothing in the history of the world that ever cheapened human life like our great war; next to that, the indiscriminate killing of men by the States.

My friend says a man must be proven guilty first. Does anybody know whether anybody is guilty? There is a great deal implied in that. For me to do something or for you to do something is one thing; for some other man to do something is quite another. To know what one deserves, requires infinite study, which no one can give to it. No one can determine the condition of the brain that did the act. It is out of the question.

All people are products of two things, and two things only—their heredity and their environment. And they act in exact accord with the heredity which they took from all the past, and for which they are in no wise responsible, and the environment, which reaches out to the farthest limit of all life that can influence them. We all act from the same way. And it ought to teach us to be charitable and kindly and understanding of our fellow-man. (Applause)

Refutation

JUDGE TALLEY

AFFIRMATIVE REFUTATION

THE CHAIRMAN: I don't propose to get mixed up in this debate, because I will be followed by a Judge and then by a distinguished lawyer. (Laughter) But, then, there are two remarks that I desire to refer to, out of fairness to the profession to which I belong and to the judiciary.

Mr. Darrow said that he did not believe, or intimated he did not believe, that the courts in this city ever assigned a first-class lawyer to defend a man who was charged with murder. I can give testimony to the fact that that is very frequently done here. (Applause) I don't know what is done in Chicago, but I recall that Mr. William H. Hornblower, Mr. De Lancey Nicoll and Mr. Samuel Untermyer were at one court in three homicide cases, and they performed their duties.

Mr. Darrow has stated that the Judges never did anything in England to stop the conviction of people for one hundred and sixty different offenses—the conviction being followed by execution. I merely wish to remind Mr. Darrow (he probably hasn't read Blackstone lately) that the great reform in the subject of criminal law wrought in England was through the Judges, against Parliament—the people; that all the great reforms which were made which ended this abuse of having one hundred and sixty penalties punishable by death were wrought by a great English Judge, Sir Samuel Romely; that the way in which the Judges circumvented the statute was to apply every possible technical rule to the interpretation of an indictment and with regard to rules of evidence to make it impossible to convict people where they had

merely stolen a shilling or committed an offense which should not have been followed by punishment by death. (Applause) I say this in the interest of a fair view of a great subject, in the interest of justice, which I do know to be an existing thing in our American life. (Applause)

We will now hear from Judge Talley for twenty minutes in refutation of the arguments presented by Mr. Darrow. (Applause)

JUDGE TALLEY: I will not move this stand back where it was before—not that I want to get next to this audience, but that I am quite content to remain close to you. (Laughter)

Now, Mr. Darrow says that there is no single argument that can be advanced in favor of capital punishment. Well, if there is any single argument that can be advanced against it, I have not heard it this afternoon. (Applause)

Did Mr. Darrow use the word logic? He used the word; he didn't adopt any of its principles. (Applause) And if there ever was a question that engaged the attention of intelligent men that must fundamentally be determined by logic it is this precise question.

Why, if I am able to gather aright Mr. Darrow's sentiments upon this subject of crime and punishment, we should not shut up any criminal in a prison cell. If criminals are solely the objects of heredity and environment, that is another and a deft way of saying that they are not responsible for their acts. And if they are not responsible for their acts, as Mr. Darrow apparently contends, why punish them at all; why not apologize to them? (Laughter and applause)

Everybody loves killing, he says. Why, that is a shocking statement to make upon a public platform.

It is because we abhor the man who kills an innocent victim that we demand that his life shall pay the forfeit for his act. It is not because we love the killing—it is because we hate the killing—that we stand for adequate and sensible punishment that will vindicate justice in our life. (Applause)

"The result of the war," says my distinguished friend. Why, there never was a greater fallacy projected upon the people of this, or any other country of the world, than that—that the criminality that we have had since the war is the result of it. The situation would be the same, in my judgment, if there had been no war, but an era of unequal peace for the last ten or fifteen years. I know of nobody, no organization, that has given more careful consideration to the amazing spread of lawlessness in this country than the American Bar Association, made up of lawyers of the distinction and eminence and sanity, such as Mr. Marshall, who adorns this platform this afternoon (applause), who, by the way, if I assigned to defend the poorest and most abject murderer that was ever indicted, would not dare, even if he were disposed, to decline to accept that assignment. (Applause). He has disposed of that unpleasant suggestion, Mr. Darrow, which I regret was made—because we are so pleasant and friendly here this afternoon. (Laughter.)

Do you suppose that if I had before me a man who, under the law, is entitled to the assignment of competent counsel to defend him for a capital crime, I would take the responsibility of assigning an incompetent lawyer to defend him? I would not, and there isn't a Judge upon the Court of General Sessions,—the only court here, Mr. Darrow, that tries homicide cases, with the rare exception of the Supreme Court—there isn't a Judge

on our bench that would assign an incompetent, helpless lawyer to defend a man charged with murder. (Applause.)

Now, this is what the American Bar Association, at its convention in 1922, said about this theory of the war being responsible for crime. And for a year after, when they met first in San Francisco and then, I think, in St. Louis, the second time, they re-affirmed what they said upon this subject:

> "Crime and lawlessness, in the United States, have been steadily on the increase and out of all proportion to our growth, and there has been a steady and growing disrespect for law. In our opinion, it is not a result of the war. We do not find the proportional increase in crime in 1916 to 1922 greater than from 1910 to 1916. And we have not been able to discover that crimes of violence have materially increased in France, in England or in Canada during or since the war, although the effects of the war naturally must have been more marked in those countries."

Mr. Darrow says that, despite the figures showing the lawlessness of this country, we prefer it. We do, thank God, prefer this above all other nations of the world. And because we prefer it, we want it to be a place for decent, law-abiding and God-fearing people to be able to dwell in. (Applause.)

"How many can medidate?" says Mr. Darrow. There never was a human being that come into this world that had not the faculty of making the choice between to do or not to do an act. (Applause.) What nonsense!—this talk of heredity and environment. That is what is back of the suggestion that man has no free will. And if he has no free will, he has no com-

mon sense. Mr. Darrow said as much in his opening statement—that he denied that there was a law written upon the heart of man that told him it was wrong to kill.

That is the trend of the criminologist of today that thinks, as apparently my distinguished friend thinks. They want to get away, not only from criminal but from moral responsibility. (Applause.) They want to get away from the idea that there is an eternal justice. And then, when they accomplish that, they will have done away with all responsibility for any act that is done out of hatred or lust or malice or a desire to gain.

He says, "Why torture one who happens to be in prison?" Men don't "happen" to be in prison. They are there because they have violated the laws of their land and the rights of some other individual, and it is only a fair measure of justice that they shall pay in punishment for the comfort or happiness or gain that they derived because of their crime.

What does Mr. Darrow offer as a substitute for capital punishment as a penalty for murder? He talked so much of the witchcraft of the Puritan father that I expected that the sensible thing would be the offering of a substitute for that which he seeks to abolish, and I fully expected him to say that we do away with the four by ten prison cell and do away with the wall that keeps from the world, that has been aggrieved, the criminals who happen to be in prison, and substitute a ducking-stool for all offenses. That was something the Pilgrim fathers had for witchcraft, as well as death.

Why, the State doesn't kill in anger. The State kills in order that the majesty of justice may be

vindicated and that people who would violate its laws must, by the example of that killing, be deterred from taking life.

Did you hear a word from Mr. Darrow when he spoke of the unfortunate who "happened" to find himself in prison—did you hear a word from his eloquent lips about the families of the victims of these 10,000 murders in the United States? You never hear, in this cry for charity for the murderer, a suggestion about charity for the woman that is left alone or with helpless children to support, whose husband has been stricken down by the revolver or the knife of an assassin. Oh, how easy it is to forget the victims of the crime and mess in mawkish sentimentality about the man responsible for that crime! (Applause.)

I hate the thought, despite what Mr. Darrow says, of anybody being killed. There is nothing inconsistent with those of us who believe that capital punishment is an essential, a necessary thing, in the maintenance of law and order in a sovereign State—there is nothing inconsistent with our abhorrence of killing. No man ever spoke on a public platform who had more of a horror in his heart against the one who would strike down life than I have. But the killing that I abhor is the killing of the victim of a wanton crime, that I think of first, and then it is time enough to think of the killing of the man who desecrated the law by taking a human life. (Applause.)

What is a substitute for it? Is it life imprisonment? Why, if that were suggested, we would be told that that was too cruel. Five years after capital punishment was abolished in the State of New York, there would be advocates coming forward, demanding that life imprisonment be abolished.

Must we do away with capital punishment be cause it is too cruel? Why, the very advocates of doing away with it would be the first to argue that life imprisonment is more cruel than snuffing out, without torture, the life of any individual.

Is the suggestion made (I thought it was) that crime and murder come from the poverty-stricken, the poor and the abject? Did not Mr. Darrow say, in referring to the assignment of lawyers, that it was only the poor, the weak and the friendless who furnished the victims of capital punishment? Why, if that is a fact, if, from the poor and the friendless and the weak alone come the murderers, then the history of centuries has been a lie that shows that it has been the rich and the powerful and the educated and the men with the best heredity and apparently the finest environment who have been guilty of the most wanton and cruel murders that ever blotted the fair name of this country or any of the countries of Europe. (Applause.)

You can't blow hot and cold on this subject. You can't on one day demand mercy for a murderer because he is poor, uneducated and abject, and, on the other hand, demand mercy for a man because he is rich and over-educated. (Applause.) What nonsense' Poverty—why, it isn't poverty that causes crime half as much as it is crime that causes poverty. What about the poverty of every victim of every one of the nineteen murderers—is that correct, Warden Lawes?

WARDEN LAWES: Twenty.

JUDGE TALLEY: Twenty murderers that are awaiting execution there? What about the poverty of the victims of those murderers—the wives and the children and the hapless? What about the poverty amongst the families of the murderers themselves?

Why, poverty is not the cause of crime, any more than heredity and environment is the cause of crime. Look around you. The most important men and women in every branch of public and private endeavor in this city and State today have come from the humblest, oft-times, the meanest surroundings. Is education or wealth going to prevent crime? I say that there are enough college graduates in the penitentiaries and prisons of the United States to equip the faculties of all the colleges in the country. (Laughter and applause.)

And I say that if a man's heart is bad, if he exercises that Divine gift of free will—which is the right to choose or not to choose—which is the thing that distinguishes men from the beasts of the field that can make no choice but that do what they do, by instinct, whereas man does it by his intelligence—I say if a man's heart is bad, the less education and the less wealth he has, the better for the decent people of the community. (Applause.)

Now, my time is up. Mr. Darrow will have to reply and, I am sure, will interest and entertain you. And it is a great pleasure for me to have the opportunity to welcome Mr. Darrow here to New York and engage in this very enjoyable and important discussion, that is, enjoyable from Mr. Darrow's point of view and mine, if not from yours.

I just want to say this word, in conclusion: If a fire broke out today in the City of New York and Chief Kenlon and his efficient force were called to put it out, before they got on their job they wouldn't stop to discuss whether or not Prometheus was properly punished for stealing the fire from the heavens; they would stop to discuss fire-fighting and its approved and best methods; they would get right on their

job and put out that fire. And, if it were necessary, in order to stop the spread of the blaze and prevent a city-wide conflagration, to dynamite your home and mine, they would dynamite them and destroy them. And then, when the fire was out, they might discuss ways and means or methods, but not until them.

We, in this country today, are being swept by a fire that has for its basis and origin an unprecedented challenge of authority. We are swept by a fire that represents a desire, upon the part of too many of our people, for inordinate pleasure as the only object worthy of their effort. We are swept by a fire of an inordinate pursuit, not only of pleasure but of wealth. We are swept by a fire of unprecedented lawlessness, disrespect for law, disregard for authority.

This is no time to advocate mitigating the rigors of the punishment of the criminal. This is the time to get back to common sense in the treatment of the willful violator of the law, the steady desecrator of the Temple of Justice. And unless, ladies and gentlemen, we come to a realization of that necessity in these, our days, the institutions that we boast of as American, the institutions that, because we are American, we love and revere, would be swept away; for, when men disregard the law, that marks the beginning of a people's decay. (Applause.)

Refutation

CLARENCE DARROW

NEGATIVE REFUTATION

THE CHAIRMAN: Mr. Darrow will now close the debate. He has fifteen minutes in which to do it. (Applause.)

MR. DARROW: Fifteen minutes in which to answer my friend and the Chairman is, perhaps, a little short; but still I can do it. (Laughter.)

I want to say, in spite of the Chairman having the added dignity of a Chairman, that every single statement that I made is true as to the Judges and the people. The long list of one hundred and seventy crimes was abolished in England because Juries would not convict, until here and there, as Mr. Marshal says, some decent Judges circumvented the law. For God's sake, Mr. Marshall, a great lawyer like you talking about Judges circumventing the law! They aren't enough today to do it. (Applause.)

Now, there is no use of mincing matters over this. There isn't any human being who ever investigated this subject that doesn't know it. Every step in humanity, in the administration of the law, has been against courts and by the people—every step. (Applause.) It is all right for Judges to write essays about it after it has happened. But over and over again, as in New England, they instructed juries to hang old women for witchcraft, and they refused. And every clergyman stood there, urging it. But they refused, and the old women were not hanged—and that was abolished in New England.

Neither am I making a misstatement when I say that good lawyers are not appointed to defend poor clients. (Applause.) Now, look that up. There may be,

here and there, some conspicuous case, but the run of poor clients in a court is without the help of lawyers who are fit to do it. And I will guarantee that every man waiting for death in Sing Sing is there without the aid of a good lawyer. (Applause.)

Now, look that up. I know about these good lawyers. They don't do it. Do you suppose you can get a member of the Bar Association to give his time for nothing? No, he leaves it to us criminal lawyers. Nothing doing—they are taking care of the wealth of corporations. That is what they are doing. (Applause.)

A VOICE: How about you?

MR. DARROW: You want to know about me? I have defended more than half of my clients for nothing. (Applause.) Ever since I began the practice of law, I have given more than a third of my time to every man in my office for nothing. (Applause.) If you want to know about me, that is the truth.

A VOICE: Was it by appointment?

MR. DARROW: No, I never was appointed in my life—never. No Judge would take my time by appointing me, any more than they do any lawyer when he wants to get paid for his services.

Now, I am going to finish this debate.

My friend doesn't believe in heredity. I didn't suppose there was more than one man in the United States who didn't believe in heredity. I knew that Mr. Bryan didn't. (Laughter.) Am I to enter into a discussion about the A-B-C's of science? There isn't a scientist on earth who doesn't believe and say that man is the product of heredity and environment alone. Of course, it takes one from the dark ages to believe in killing human beings. (Applause.)

He talks of logic. He says I don't believe in free will (I do not) and that, therefore, I would say that no man should be confined. Does that follow? No.

Why do we send people to prison? Because we want to hurt them? No. We send them in self-defense, because for some reason they can't adjust themselves to life. (Applause.) And no other reason than that is admissible, and no humane person believes any other reason is admissible.

Why, you want to know about it? If you do, read study. There have been a great number of scientific men whose work has been for the benefit of the human race. A great many of these have been students of criminology. Yet, we hear them sneered at this afternoon by men who know nothing, men who dare say that heredity is all "bunk."

Well, of course, it seems kind of hopeless to teach people anything. (Laughter.) I wonder if the gentleman believes in heredity in the breeding of cattle? I wonder if he believes in heredity in the breeding of pigs. I wonder if he believes in heredity—well didn't he ever see any heredity in a human being? Didn't you see your mother, your father, your grandmother, your grandfather? Why discuss it? Everybody knows it. And those who don't know it, don't want to know it—that's all. (Applause.)

I did not say that every case in prison was that of a poor person. I said that almost all of them were. My friend said that, probably, to make the utterly absurd statement about a terrible crime—the most terrible, he said—because he read it in the newspapers. He doesn't know anything about it—but it is common for a Judge to pass judgment upon things he is not acquainted with. (Laughter.)

I said that the great mass of people in prison are the poor. Am I right or am I wrong?

CHORUS: Right! (Applause.)

MR. DARROW: Where do you live that you don't know it? I want to get you to look into this question. And you can't do it in a minute. You can sing Hosanna when some poor devil is sent to Kingdom Come, but you can't understand without thought and study. And, contrary to my friend, everybody doesn't think. He says everybody born has free will. Have they? Everybody born has free will —what do you think of that?

Now, am I right in my statement that it is the poor who fill prisons and who go to the scaffold and who are prosecuted and persecuted? Nobody who knows anything about it believes that the rich are the ones, or any considrable fraction of the rich.

He hasn't given me time to shed tears over the victims of the murderers. I am as sorry for them as he is, because I hate cruelty; no matter who suffers, I hate it. I don't love it and get pleasure out of it when it is done by hanging somebody by the neck until dead—no.

But, now, let me tell you. You can find out. I will guarantee that you can go through the Tombs and you won't find one out of a thousand that isn't poor. You may go to Sing-Sing and you will not find one out of a thousand who isn't poor. (Applause.) Since the world began, a procession of the weak and the poor and the helpless has been going to our jails and our prisons and to their deaths. They have been judged as if they were strong and rich and intelligent. They have been victims, whether punishable by death for one crime or one hundred and seventy crimes.

And, we say, this is no time to soften the human heart. Isn't it? Whenever it is the hardest, that is the best time to get at it. When is the time? If he is right, why not re-enact the penal codes of the past? What do you suppose the American Bar Association knows about this subject? (Laughter.)

A VOICE: More than you.

MR. DARROW: Do you think so? Then you don't know what you are talking about. (Applause.) Their members are too busy defending corporations. There isn't a criminologist in the world that hasn't said what I have said. And you may read any history or any philosophy and they each and every one point out that after every great war in the world, wherever it was, crimes of violence increased. Do I need to prove it? (Applause.)

Let me ask you this: Do you think man, in any sense, is a creature of environment? Do you think you people could, day by day, wish and hope and pray for the slaughter of thousands of Germans because they were your enemies, and not callous you to suffering? Do you think that children of our schools and our Sunday-Schools could be taught killing and be as kindly and as tender after it as before? Do you think man does not feel every emotion that comes to him, no matter from what source it comes? Do you think this war did not brutalize the hearts of millions of people in this world? And are you going to cure it by brutalizing it still more by capital punishment?

If capital punishment would cure these dire evils that he tells us about, why in the world should there be any more killing? We have had it always. We have had it long enough. It should have been abolished long ago.

In the end, this question is simply one of the humane feelings against the brutal feelings. (Applause.) One who likes to see suffering, out of what he thinks is a righteous indignation, or any other, will hold fast to capital punishment. One who has sympathy, imagination, kindness and understanding, will hate it and detest it as he hates and detests death. (Applause.)

FINIS

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Mr. NEARING, Affirmative **Mr. RUSSELL**, Negative

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JOHN S. SUMNER

Secretary, Society for the Suppression of Vice

VERSUS

ERNEST BOYD

Noted International Critic Writer

Chairman: CLIFFORD SMYTH, Ed. International Book Review
Temporary Chairman: JOHN FARRAR, Editor The Bookman

SUBJECT:

RESOLVED: That limitations upon the contents of books and magazines as defined in proposed legislation would be detrimental to the advancement of American literature.

Mr. SUMNER, Negative **Mr. BOYD**, Affirmative

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